1-29-73

BEFORE THE UNITED STATES

ATOMIC ENERGY COMMISSION

In the Matter of	)	
	)	
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.	)	Docket No. 50-286
	)	
(Indian Point Unit No. 3)	)	

APPLICANT'S ANSWER TO
SUPPLEMENTAL MEMORANDUM IN SUPPORT OF
MOTION TO CONSOLIDATE

In a memorandum dated January 23, 1973, Hudson River Fishermen's Association and Save Our Stripers ("Movants") have sought to elaborate on their January 2, 1973, Motion to Consolidate the Indian Point 2 and Indian Point 3 operating license proceedings. Based on the original motion as well as the later memorandum, there is no basis for granting the relief requested.

Movants' latest pleading makes four points. Taken singly or as a whole, these do not support an order for consolidation.

First, Movants indicate they are "indifferent" to consolidation on the radiological health and safety issues. It is an open question whether proceedings (as opposed to parties) may be consolidated in this piecemeal fashion. Compare 10 CFR § 2.715a with 10 CFR § 2.716. In any event, this "indifference" is hardly an argument in favor of consolidation.

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Second, they proclaim their desire that Indian Point 2 proceed without any delay, seeking only that "[t]he record developed in Indian Point 2 . . . become part of the record" in the Indian Point 3 hearing. Applicant has already noted that there is nothing to prevent a stipulation under which appropriate portions of the Indian Point 2 evidence could be incorporated by reference. What Movants seek, however, is to have the Commission bring about such incorporation by reference by administrative fiat, regardless of the relevance or materiality of the evidence. There is no legal support for this. The matter should rather be left to the parties and the Atomic Safety and Licensing Board, when one is designated, to resolve in the spirit of the Commission's Rules of Practice. See, e.g., 10 CFR §§ 2.751a, 2.753, 2.756, 2.759.

Third, Movants would allow the parties to show how Indian Point 3 involves factual or legal issues different from those in Indian Point 2, but only after a ruling by the Licensing Board that the cases are distinguishable. In Applicant's view, this represents an attempt by the moving parties to obtain a premature ruling on hearing procedures, in complete contradiction to their fourth argument, which looks to the Licensing Board to determine these matters. If Movants desire thus to delimit issues and evidence, they may do so in due course before the Licensing Board.

Applicant does not oppose the appointment of the Indian Point 2 Licensing Board members to the Licensing Board in this case. Given this area of agreement with Movants, Applicant fails to see any advantage to be gained by a piecemeal consolidation order as now proposed by Movants.

For the foregoing reasons, as well as those stated in its Answer to the Motion to Consolidate, Applicant again prays that the Motion to Consolidate be denied.

Respectfully submitted,

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January 29, 1973

BEFORE THE UNITED STATES

ATOMIC ENERGY COMMISSION

In the Matter of	)	
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CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.	)	Docket No. 50-286
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CERTIFICATE OF SERVICE

I hereby certify that I have this 30th day of January, 1973, served copies of the foregoing document entitled "Applicant's Answer to Supplemental Memorandum in Support of Motion to Consolidate" by mailing copies thereof first class, postage prepaid and properly addressed to the following persons:

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